IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 76 OF 2000.

Vilas Ghadge, presently
undergoing sentence at
Central Jail, Aguada,
Bardez Goa. ... Appellant.

Versus

State ... Respondent.

Mr. S.G. Dessai, Senior Advocate with Mr. Arun Bras de Sa, Advocate for the Appellant.

Ms. W. Coutinho, Addl. Public Prosecutor for the Respondent State.

Coram: V.C. DAGA AND
P.V. HARDAS, JJ.

Date: 10th July 2002.

ORAL JUDGMENT (PER HARDAS, J.)

The appellant stands convicted for an offence punishable under Section 302 of the Indian Penal Code, by the Additional Sessions Judge, Panaji, in Sessions Case No. 45 of 1999, by Judgment dated 29th August 2000 and sentenced to undergo imprisonment for life for the aforesaid offence. It is this conviction and sentence which is challenged by the present appellant in this appeal.

2. The facts necessary for the decision of the appeal are set out hereunder:-

On 2nd September 1999 at about 4.00 p.m., P.W.7 Dilip Vadekar, a mechanic working in the Public Works Department, Ponda, went for the purpose of

checking the pipelines. When he went to the air valve chamber situated at Kerim-Khandeapar he noticed foul smell from the chamber. In order to locate the source of the foul smell, P.W.7 Dilip saw inside the air valve chamber and saw some clothes inside the chamber. Suspecting some foul play, he returned to the office and informed his superior P.W.1 Shrikant Paranjekar. On 3rd September 1999 P.W.1 Shrikant filed a report Exhibit P.W.1/A in the Ponda Police Station. P.W.17 P.I. Mohan Naik was then working as the Officer-in-Charge of the Ponda Police Station. On the basis of the said report, he registered a case of unnatural death vide No. 60/99, under Section 174 Criminal Procedure Code. P.W.17 P.I. Mohan, after giving intimation to the Deputy Collector and the Sub-Divisional Officer, Ponda, proceeded to the scene of offence alongwith P.W.1 Shrikant. P.W.1 Shrikant pointed out the air valve chamber and P.W.17 P.I. Mohan saw a dead body of a female lying inside the air valve chamber. P.W.17 P.I. Mohan then secured the presence of panchas P.W.4 Yeshwant Mapari and one Smt. Deodita Fernandes and conducted the scene of offence panchanama, which is at Exhibit P.W.4/A. Plastic slipper M.O.3, which was lying near the air valve chamber at a distance of 15 metres came to be attached. Photographs marked as X-1 to X-4, X-9 and X-10 were taken. In the presence of the same panchas, after

removal of the dead body from the air valve chamber, an inquest panchanama at Exhibit P.W.4/B was recorded. The deceased was wearing a blue colour sari with white dots, a white colour blouse and a pink colour ghagra. The said wearing apparel is M.O.1/A to M.O.1/C respectively. The deceased was also wearing earrings (M.O.2B), a black beaded mangalsutra (M.O.2A) and glass bangles (M.O.2C). P.W.17 P.I. Mohan then sent the dead body to the Goa Medical College for postmortem examination. The postmortem was conducted by P.W.14 Dr. E.J. Rodrigues and his postmortem report is at Exhibit P.W.14/A. P.W.14 Dr. E.J. Rodrigues noticed two external injuries which are:-

> (1) Bruise purplish of 4 x 3 cms., mid outer aspect of the left arm and
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> (2) Fracture of the maxilla between 14-15, 22-23 and mandible on the left side at 31-32 with complete loss of soft tissues and skin of face with exposure of maxilla, mandible with antimortem staining seen at fracture ends with compound commuted fracture of the nasal bones, right mellar bones, dislocation of right tempero mandibular joint with effusion at that site with soft tissue destruction of scalp tissue by maggots of 1.2 cms. size crawling all over the face with the exposure of vault of scalp. There is fracture of hard palate in mid line with commuted fractures. Effusion of blood with staining effects in right mastoid region and also in the neck muscles on the right side and upper and middle part of the neck.

According to him both the injuries were caused by blunt force. On internal examination he noticed fracture of right third to ninth and left third to eighth ribs on both sides of the chest with extravation of blood in intercostal muscles with fracture fragment ends going inwards. P.W.14 Dr. Rodrigues, on the basis of his examination, opined that death was due to facial injuries associated with bilateral chest injury consequent to blunt force impact. He has also opined that these injuries were fatal in ordinary course of nature.

3. P.W.17 P.I. Mohan then perused the record of the missing persons and found a missing report No. 39/99, dated 29th August 1999, filed at Ponda Police Station and noticed that the description of the missing person in the said report tallied with the description of the deceased. The said missing report had been filed by the present appellant. The said missing report was recorded by P.W.5 Ramnath Shetgaonkar and the same is at Exhibit P.W.5/A. It appears that P.W.17 P.I. Mohan visited the house of the appellant on 4th September 1999 but the appellant was not found in his house. The brother of the appellant by name Umesh partly identified the dead body and requested the police to call the father of the deceased for identification. On 5th September 1999 P.W.15

Ramchandra Shivsharan, father of the deceased, lodged a complaint at Exhibit P.W.15/D against the present appellant. On the basis of the said complaint an offence under Section 302 of the Indian Penal Code vide Crime No. 204/99 was registered. P.W.15 Ramchandra produced 3 letters sent by the deceased and the same are at Exhibits P.W.15/A, B and C. P.W.15 Ramchandra also produced a photograph of the deceased and the accused and the same is at Exhibit P.W.12/A. P.W.17 P.I. Mohan arrested the appellant on 7th September 1999. While in custody it is alleged that the appellant/accused made a disclosure statement which resulted in the discovery of one chappal of the deceased M.O.5, a bag of the deceased M.O.6 and three stones M.O.4A, M.O.4B and M.O.4C, in the presence of P.W.6 Nandini Herlekar and one Umanath Borkar. The memorandum and the panchanama is at Exhibit P.W.6/A.

4. P.W.8 Minguel Pereira, a Draftsman, has drawn the sketch of the scene of offence and the sketch is at Exhibit P.W.8/A.. On 15th September 1999 P.W.17 P.I. Mohan moved an application before the Special Judicial Magistrate for recording the statement of the accused under Section 164 of Criminal Procedure Code. The statement of the accused was recorded by P.W.13 Suresh Pilankar, Special Judicial Magistrate and the confession/statement of the accused is at Exhibit

P.W.13/A. The report of the Central Forensic Science Laboratory at Exhibit P.W.17/A shows that blood was detected on saree, torn blouse and one cement concrete stone. The blood stains which were found on the blouse and the stone were insufficient for serological examination. The blood found on the saree was human but the group could not be determined. The viscera examined did not yield any fruits as no poison was detected. After completion of the investigation, a chargesheet against the appellant came to be filed. On committal, the learned Additional Sessions Judge, Panaji, vide Exhibit 5 framed a charge against the appellant for an offence punishable under Sections 302 and 201 of the Indian Penal Code. The accused denied his guilt and claimed to be tried. The prosecution in support of its case examined 17 witnesses.

5. The learned trial Court in paragraph 6 of its Judgment has averted to the following circumstances which merge from the prosecution evidence:-

> "1. Dead body of the deceased Jayshree was found in a decomposed state on 2.9.1999 inside the air valve chamber which is an isolated place;
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> 2. The missing report filed by the accused which is contradictory to the statement given by the accused to the prosecution witnesses;
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> 3. The accused and the deceased were travelling in a bus from MRF

bus stop to Kerim bus stand and last seen together when they got down at Kerim bus stand on 28.8.1999;

4. The absence of the accused from his duty from 23.8.1999 to 28.8.1999;

5. Recovery of the stones, chappal and the bag at the instance of the accused, and

6. Relations between the accused and his wife Jayshree."

6. Asfaras the finding of the body of the deceased in the air valve chamber is concerned, the prosecution has examined P.W.1 Shrikant Paranjekar, P.W.7 Dilip Vadekar and P.W.4 Yeshwant Mapari. There is not much dispute that the body of the deceased was found in the air valve chamber. The prosecution has also examined P.W.10 Claudio Fernandes, an employee of MRF to prove that the appellant/accused last attended his duties on 5th August 1999 and was absent on 3rd, 21st, 23rd to 28th, 30th and 31st August 1999. The prosecution has also examined P.W.9 Tabib Mamlekar, the landlord, to prove strained relations between the accused and the deceased. P.W.9 Tabib states that he has no personal knowledge and the other tenants used to tell him that the deceased and the accused used to quarrel frequently. Since his evidence is hearsay evidence, it does not assist the prosecution.

7. The prosecution has examined P.W.2 Krishnem More, P.W.3 Ratna Kammar and P.W.11 Mina Oli, who are

the neighbours.

8. According to P.W.2 Krishnem, the house of the appellant/accused is situated in front of her house. She states 'I cannot say what was the relation between the accused and his wife'. She further states that one day in the month of August the parents of Jayshree (deceased) and her two uncles had come from Bombay. They stayed in the house of deceased and left on the next day. On the next day of their leaving, the accused and the deceased went to the market. P.W.2 Krishnem further states that she had inquired from the son of the appellant as to where the deceased and the appellant had gone and he had informed that they had gone to the market. According to her, this happened on subsequent two days also. She further states that on the fourth day she heard the accused asking P.W.3 Ratna if his wife had returned. P.W.2 Krishnem further states that she heard the accused telling P.W.3 Ratna that he had told his wife to return home directly after purchasing vegetables as he would go to bring his daughter from the school. She states that the accused had washed a saree belonging to his wife and he had hung it outside his house for drying.

9. P.W.3 Ratna states that in August she had seen the parents of the deceased visit the deceased

alongwith two uncles of the deceased. According to her, they had stayed for about 3 days and thereafter they had left. She states that on 25th, 26th and 27th of August she saw the appellant and the deceased going out together. According to her, on 28th of August the appellant asked her at about 12 noon if the deceased had returned. The appellant had told her that he had told the deceased to go home directly after purchasing the vegetables as he would go to the school to bring his daughter. She further states that in the afternoon she saw the accused putting a saree belonging to the deceased for drying. She states that P.W.2 Krishnem had asked her about the deceased and she had told P.W.2 Krishnem that the deceased had not returned. She further states that at about 9.00 p.m. she had asked the accused if the deceased had returned and the accused had replied that he had searched for her but he could not find her. She also states that the accused told her that he had gone to the police to lodge a complaint but the police had refused to take his complaint. In the cross-examination this witness admits 'I do not know whether there any quarrel between Jayashree and accused'. She further admits in the cross-examination 'because I am not heard the accused and wife talking each other I say that the relation were not good'.

10. The prosecution has examined another neighbour P.W.11 Mina. P.W.11 Mina states that on 28th August 1999 she had heard the conversation between the appellant/accused and P.W.3 Ratna. She also states that she had seen the saree of blue colour being hung for drying.

11. The prosecution has examined P.W.15 Ramchandra, father of the deceased. In fact, according to P.W.15 Ramchandra, the accused is the brother of his first wife and deceased Jayashree is his daughter from the first wife. Thus the accused was the uncle of the deceased. He states that the accused and the deceased were married about 12 years ago. According to him, initially after marriage their relations were good but after some time the relations were strained and there used to be quarrels between them. According to P.W.15 Ramchandra, the quarrels used to be because the accused was suspecting the fidelity of his wife. He produced three letters and the letters are at Exhibit P.W.15/A to P.W.15/C. He states that he had come to Goa on 22nd August 1999 and the deceased had told him that the accused was harassing her and beating her. She had also shown a swelling on the forearm. I told the accused not to beat and assault the deceased. He further states that he stayed in Goa for three days and left Goa on 24th August. After he had reached Bombay,

two or three days thereafter, he received a phone call from the accused informing him that the deceased is not at home and the accused did not know where she had gone. The accused had inquired whether the deceased had come to Bombay. P.W.15 Ramchandra told the accused to find out if the deceased had gone to his brother's house. According to P.W.15 Ramchandra, two days thereafter the accused himself came to Bombay and said that he required the photograph of deceased in order to report to the police. P.W.15 Ramchandra gave the photograph to him but the accused forgot to take it with him when he went to visit his sister at Dombivili. The accused returned to the house of P.W.15 Ramchandra but did not take the photograph. He states that on or about 4th September 1999 he received a phone from the brother of the accused informing him that a dead body was found and requested him to come for identification. He further states that he identified the dead body and lodged a report with the police. He identified his signature on the report Exhibit P.W.15/D. In the cross-examination he has admitted that after the birth of two children, the accused started harassing the deceased. The deceased had not complained of harassment in other letters apart from the three letters which he had produced. He admitted that he had not stated to the police that the deceased had shown any swelling on her forearm. He also admitted that the

photograph of the deceased was taken about 3 years back.

12. The prosecution has examined P.W.16 Pramod Gaonkar, a teacher who was residing in the tenement near to the house of the accused. He states that the owner had requested the accused to vacate the room as the accused used to drink and create trouble. Curiously the prosecution has examined P.W.9 Tabib Mamlekar, the landlord of the chawl. P.W.9 Tabib makes no reference to this fact at all.

13. The prosecution has examined P.W.5 Head Constable Ramnath Shetgaonkar, who recorded the missing report Exhibit P.W.5/A on 29th August 1999. P.W.5 Ramnath states that the accused had informed him that his wife had left without informing anyone and she had gone to the house of his brother at Vasco. Curiously in the report at Exhibit P.W.5/A it is stated by the accused that his wife had left without informing anyone. Previously she had gone to visit her brother's house at Vasco. Since she had not gone to his house, the missing report is being lodged.

14. The prosecution has also examined P.W.12 Ashok Krishna, a Conductor working in a private transport bus. He states that on 28th August 1999 the

accused and the deceased boarded the bus at the M.R.F. bus stop and alighted from the bus at a stop at Kerim. He also states that after 10 days the police had shown him the photograph and he had identified them. On the basis of the photograph shown to him in the Court he has identified the deceased. In the cross-examination he was unable to describe the colour of the clothes worn by the other passengers in the bus. At the outset we may state that it is very difficult to attach any credibility to the evidence of this witness. He does not claim that he knew the deceased and the accused since prior to the incident. He does not claim that they were regular commuters in the bus. He claims to identify and state that the deceased had boarded the bus 10 days thereafter on seeing a photograph. According to us, the evidence of P.W.12 Ashok regarding his identification of the deceased on the basis of the photograph does not inspire any confidence at all.

15. The prosecution has examined P.W.13 Suresh Pilankar, Special Judicial Magistrate, who has recorded the confession of the accused which is at Exhibit P.W.13/A. At the outset, this cannot amount to a confession as there are no inculpatory statements in the confession at all. A perusal of this confession at Exhibit P.W.13/A does not disclose the commission of any offence by the accused. No reliance, therefore, at

all can be placed on the confessional statement.

16. The prosecution has examined P.W.6 Nandini on the discovery memorandum of the appellant at Exhibit P.W.6/A, which led to the discovery of stones, chappal and a bag. In the examination-in-chief itself this witness states 'we were searching and the police were searching for the chappals and on the left side near the tank there was a chappal which was found by the police'. In the cross-examination this witness has admitted 'P.I. Mohan Naik did not tell us the importance of the panchanama but only brought the accused before us and told us that whatever you have told us yesterday you tell before us, and also told that we are from the Mamlatdar office'. This would obviously mean that the police had prior information as to where the stones, chappal and the bag were and the discovery memorandum was just a ploy to turn an ordinary discovery into a discovery. Therefore, according to us, no importance can at all be attached to the fact that the accused had volunteered to discover the stones, chappal and the bag belonging to the deceased.

17. At paragraph 6 of the Judgment the learned trial Court has found that there are six circumstances which have been established by the prosecution. These

circumstances have been adverted to by us in our Judgment earlier. The first circumstance is the fact that the dead body of the deceased was found in a decomposed state in the air valve chamber. This circumstance, according to us, has been established by the prosecution.

18. The third circumstance found by the trial Court is that the accused and the deceased had travelled in the bus from M.R.F. bus stop to Kerim bus stand and were last seen together. This circumstance is sought to be proved on the evidence of P.W.12 Ashok. We have already held that the evidence of P.W.12 Ashok does not inspire confidence at all and, therefore, according to us, the circumstance of last seen is not proved by the prosecution.

19. The fourth circumstance is the absence of the accused from duty from 23rd August to 28th August 1999. This circumstance, according to us, has been established by the prosecution through the evidence of P.W.10 Claudio Fernandes.

20. The fifth circumstance is the recovery of stones, chappal and bag by the accused. For the reasons given by us, this circumstance has not been established by the prosecution.

21. The sixth circumstance is the strained relations between the accused and his wife, which has been proved by P.W.15 Ramchandra. P.W.15 Ramchandra does state that the discord between the accused and the deceased was a recent one. The relations between the deceased and the accused were good till the birth of the second child. However, from the evidence of P.W.15 Ramchandra it does appear that all was not well and there were some bickerings between the deceased and the accused.

22. The second circumstance found by the learned trial Court is the contradictory version given by the accused in the missing report and to P.W.3 Ratna. The contradiction alleged by the prosecution is extremely minor. According to the report, the deceased had left the house without informing anyone. The version given by the accused to P.W.3 Ratna is that he had asked the deceased to come home directly after purchasing vegetables. This so called contradictory version pales into insignificance, in view of the conduct of the accused. The conduct of the accused in immediately lodging a missing report with the police speaks volumes about his innocence rather than a pointer towards his guilt. It may be possible that the accused may not have liked to disclose to P.W.3 Ratna that his wife had left the house without informing him. It is quite

possible that this state of affairs may prove to be a source of embarrassment to him. Therefore, it is quite likely that the accused may have stated to P.W.3 Ratna that he had asked his wife to come directly home after purchasing vegetables. The sole purpose of the conversation with P.W.3 Ratna was to inquire if the deceased had returned home. This conduct of the accused to ask his neighbours whether they had seen his wife is a pointer towards the innocence of the accused. Therefore, according to us, the second circumstance about the contradictory statements is not proved.

23. Thus, the prosecution has been able to establish that the relations between the accused and his wife were slightly offcolour. The prosecution has also been able to establish that the accused was absent from his duty from 23rd August to 28th August 1999. The prosecution has also been able to prove that the dead body of the deceased was found in the air valve chamber on 2nd September 1999. Apart from these three circumstances, according to us, the prosecution has not been able to establish the other circumstances.

24. In order to sustain the conviction on the basis of circumstantial evidence, the prosecution is enjoined with the responsibility of proving each and every circumstance and the circumstance so proved

should form a complete chain which should rule out every hypothesis of the innocence of the accused and should unerringly point towards the guilt of the accused. According to us, the circumstances so proved by the prosecution falls woefully short of establishing the guilt of the accused. According to us, therefore, the appellant/accused is entitled to be given the benefit of doubt.

25. In the result, Criminal Appeal is allowed. The conviction and sentence passed by the Additional Sessions Judge, Panaji, in Sessions Case No. 45 of 1999, convicting the appellant for an offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life is, hereby, quashed and set aside. The appellant is acquitted of the aforesaid charge. The appellant be set at liberty forthwith, if not wanted in any other case. Fine, if paid, be refunded to the appellant.

(V.C. DAGA)
JUDGE.

(P.V. HARDAS)
JUDGE.

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